so doing did not know, nor have reason to believe, that the other person was armed.

"There is another group of cases, on which the plaintiff in error mainly relies, in which the assured was killed by a third person, where recovery is not allowed; but in all these cases the deceased engaged in an encounter under such circumstances that he invited his adversary to mortal combat, and either foresaw or should have foreseen that death or injury might result. See Taliaferro *v.* Travelers' Protective Ass'n (8 C. C. A.) 80 Fed. 368, 25 C. C. A. 494; Hutton *v.* State's Accident Ins. Co., 267 Ill. 267, 108 N. E. 296, L. R. A. 1915E, 127, Ann. Cas. 1916C, 577; Meister *v.* General Accident, Fire & Life Ins. Co., 92 Or. 96, 179 Pac. 913, 4 A. L. R. 718. Of these cases Taliaferro *v.* Travelers' Protective Ass'n may be taken as typical. The deceased had drawn a revolver and had struck his adversary in the face before the latter drew his revolver and fired, and it was held that the insured's death was not accidental, because he foresaw or should have foreseen that death or injury might probably result from his own conduct. Other cases in which death was due, not to intentional killing, but to other causes alleged to be accidental, are cited and relied on, particularly Fidelty & Casualty Co. *v.* Stacey's Executors (4 C. C. A.) 143 Fed. 271, 74 C. C. A. 409, 5 L. R. A (N. S.) 657, 6 Ann. Cas. 955, and Maryland Casualty Co. *v.* Spitz (3 C. C. A.) 246 Fed. 817, 159 C. C. A. 119, L. R. A. 1918C, 1191. No criticism can be made of the law stated therein or the judgments rendered; but they are not in point, and are sufficiently distinguished by reference to U. S. Mutual Accident Ass'n *v.* Barry, 131 U. S. 100, 9 Sup. Ct. 755, 33 L. Ed. 60."

Robbery—Intoxicating Liquor as Subject Matter of Robbery.—In Arner *v.* State, 197 Pac. 710, the Criminal Court of Appeals of Oklahoma, held that, intoxicating liquor, possessing the inherent character of personal property, may be the subject-matter of robbery, irrespective of the purpose for which it is kept or used.

The court said: "An entire consideration of the prohibitory liquor laws of this state discloses that the intent of the Legislature was to provide that intoxicating liquors possessed by a person for the purpose of violating any of the provisions of the prohibitory liquor laws should be contraband property as between the state, its officers, and such person; that a person unlawfully possessed of intoxicating liquors, etc., could not claim to have property rights in such articles in a proceeding brought by the state to confiscate them; not that the articles and things condemned, when unlawfully kept or used, were not property. In the case of Tom Thomas *v.* State, 13 Okl. Cr. 414, 164 Pac. 995, which was a conviction for the crime or murder committed by defendant while engaged in the perpetration of a whisky robbery, the contention was made that defendant was not guilty of

the crime of murder committed in the perpetration of a robbery, because whisky used in violation of the law was not the subject of robbery. In passing upon this contention, this count, in the body of the opinion said:

"'The contention that because whisky is contraband property in this state, as against the state and its officers, others are entitled to rob and murder * * * to obtain possession of it from one who is using it unlawfully, is wholly without merit. Neither robbery nor murder may be justified or excused on such a ground.'

"In Mance *v.* State, 5 Ga. App. 229, 62 S. E. 1053, it is held:

"'Intoxicating liquor may be the subject-matter of larceny, though it is not the subject-matter of lawful sale.'

"Also, in Smith *v.* State, 187 Ind. 253, 118 N. E. 954, L. R. A. 1918D, 688, it is held:

"'Although property is illegally held and used for gambling purposes, in violation of Burns' Ann St. § 2474, it is nevertheless a subject of larceny.'

"In the body of the opinion it is said:

"'Appellant is in error as to his second proposition that property held and used for gambling purposes is not the subject of larceny. The decisions are uniform in holding that such property is the subject of larceny, as will be seen by reference to 25 Cyc. 13, note 20. The text, which is supported by the cases cited in the note, announces the rule generally that: "The fact that property is illegally held or used is immaterial on the question of whether it is a subject of larceny.' One of the leading cases on this subject is Commonwealth *v.* Rourke, 10 Cush. (Cass.) 397, 399. In that case it was said: 'The law punishes larceny because it is larceny; and therefore one may be convicted of theft, though he do but steal his own property from himself or his bailee. 7 H. VI 43a; 3 Co. Inst. 110. And the law punishes the larceny of property, * * * because of its own inherent legal rights as property; and therefore even he who larcenously takes the stolen object from a thief whose hands have but just closed upon it may himself be convicted therefor in spite of the criminality of the possession of his immediate predecessor in crime. Of the alternative moral and social evils, which is the greater, to deprive property unlawfully acquired of all protection as such, and thus to discourage unlawful acquisition, but encourage larceny, or to punish, and so discourage larceny, though at the possible risk of thus omitting so far forth to discourage unlawful acquisition? The balance of public policy, if we thus attempt to estimate the relative weight of alternative evils, requires, it seems to us, that the larceny should be punished."

"'It has been held that larceny of gaming checks can be committed, although gaming is illegal (Bales *v.* State, 3 W. Va. 685), and that it is no defense to an indictment for stealing intoxicating liquors that the

liquors stolen were kept for sale in violation of law (State *v.* May, 20 Iowa, 305; State *v.* Sego, 161 Iowa, 71, 140 N. W. 802; August *v.* State, 11 Ga. App. 798, 76 S. E. 164).'

"'In Osborne *v.* State, 115 Tenn. 717, 719, 92 S. W. 853, 5 Ann. Cas. 797, it is held to be "well settled that a chattel kept for an unlawful purpose, such as intoxicating liquors kept for sale in violation of law, or gambling paraphernalia, the possession of which is prohibited, may be the subject of larceny." See, also, People *v.* Ward, 134 Cal. 301, 309, 66 Pac. 372; Commonwealth *v.* Copper, 130 Mass. 285; Fears *v.* State, 102 Ga. 274, 280, 29 S. E. 463; Averill *v.* Chadwick, 153 Mass. 171, 26 N. E. 441.'

"The conclusion is reached, therefore, that the pertinent inquiry is whether or not the chattel or thing taken is personal property, and not whether the possessor from whom it was taken was holding the same in violation of the laws of this state. Independent of the question of whether Leming was unlawfully possessed of the whisky, the whisky itself had all the characteristics of personal property. It was personal property, and as such was the subject of larceny and of robbery, whether possessed lawfully or unlawfully, and this is true although the state, through its lawfully constituted officers, could seize (and destroy the same) from one unlawfully possessing it."

Streets and Highways—Person with Impaired Eyesight as Guilty of Contributory Negligence.—In Shields *v.* Consolidated Gas Co., 183 N. Y. S. 240, the Supreme Court of New York held in an action for injuries to a pedestrian who fell into an unprotected gas trench, that evidence that plaintiff's eyesight was impaired, and that the excavation occupied a part of the former cross-walk, not to show contributory negligence as a matter of law, though the accident occurred in broad daylight.

The court said in part: "It is well settled that one who is blind or whose eyesight is impaired, is not thereby deprived of the right to use the public highways, and that in venturing onto them he does not do so at his peril. He was only bound in so doing to exercise the care and caution that a person of ordinary prudence, who is blind, or whose eyesight is so impaired, would have exercised under the circumstances; and the principle is the same as that applicable to the use to a street by persons with unimpaired eyesight, but whose sight is of no avail owing to darkness, or is materially affected thereby, and such a person, in the exercise of his right to use the public highways, is justified in assuming, if he does not possess knowledge to the contrary, that the public streets are reasonably safe for travel, and that, if an excavation has been made therein, it will be guarded, or that pedestrians will in some manner be protected from danger there-